

**MEMORANDUM**

May 11, 1994

TO: [Name1 withheld]  
Department of Facilities and Services

FROM: Jay L.Cohen, Chairman [initialed]  
Montgomery County Ethics Commission

RE: Request for Advisory Opinion

The Ethics Commission has considered your request for advice regarding the book you have written and plan to have published in May 1994. The following information was provided by you in support of your request.

In your memorandum dated January 27, 1994, you indicated that you have written a book entitled "[Title redacted]" which you describe as a book about the success of Total Quality Management (TQM) in Montgomery County. You stated that you wrote this book because the County Executive had been asked by the County Council to provide a list of accomplishments resulting from the application of TQM principles within the County. By your memorandum, you requested permission to provide the publisher of the book with the names of individuals who may be interested purchasing the book, including County employees who have attended classes within the County and organizations for whom you have provided training. These individuals would thereupon be solicited by your publisher to purchase your book at a "reduced" price.

The Commission invited you to attend its meeting on March 29, 1994, to provide further explanation of your proposal. At that time, you stated that the book is a compilation of articles that you have written throughout your career concerning attitude and TQM principles. Included as a chapter in the book is the report that you prepared for the County Executive to submit to the County Council. You clarified that you brought this methodology to the County and obtained your training and knowledge from your experiences prior to County employment. Moreover, you stated that your drafting and editing of the book was performed during your own time, e.g., evenings and weekends. Finally, you explained that the publisher will market the book and that 40% of the income from sales will be provided to you, adding that you need to sell 5,000 books in order to recoup monies you have paid for the book's publication.

Applicable Provisions of the Ethics Law

There are five separate provisions of the Ethics Law which directly relate to your planned publication and sale of “[Title withheld]”. Specifically, §§19A-12(a)(1), 19A-14(a), 19A-14(b), 19A-14(c), and 19A-15(a) apply to your request.

Generally, a public employee “[m]ust not engage in any other employment unless the employment is approved by the Commission.” §19A-12(a)(1) of the Montgomery County Code 1984, as amended. Employment is defined as “engaging in any activity for compensation.” §19A-4(f) of the Montgomery County Code.

Section 19A-14 of the Ethics Law further provides that:

- (a) A public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customary constituent services, without additional compensation, is not the use of prestige prohibited by this subsection.
- (b) Unless expressly authorized by the Chief Administrative Officer a person must not use an official County agency title or insignia in connection with any private enterprise.
- (c) A public employee must not use any County agency facility, property, or work time for personal use or for the use of another person, unless the use is:
  - (1) generally available to the public; or
  - (2) authorized by a County law, regulation, or administrative procedure.

\* \* \*

Pursuant to §19A-15(a) of the Ethics Law, a public employee must not disclose confidential information or use such information for personal gain or the gain of another. State law specifically includes employee names and addresses within its designation of confidential information, which may not be released to the public. See Md. State Govt. Code Ann. §§10-616 and 10-617 (personnel records are confidential; portions of public record containing employee names and addresses are confidential).

Finally, the Ethics Law contains two different provisions for the granting of waivers. The Ethics Commission may grant a waiver from the requirements of §19A-12 of the Ethics Law relating to secondary employment approval if it finds one of the following:

- (1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or

- (3) the proposed employment is not likely to create an actual conflict of interest.

§19A-8(b) of the Montgomery County Code. The other four provisions, §§19A-14(a), 19A-14(b), 19A-14(c), and 19A-15(a), may be waived by the Commission only if it finds all of the following:

- (1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give a public employee an unfair advantage over other members of the public.

§19A-8(a) of the Montgomery County Code.

#### Application of Ethics Law to Present Situation

For the following reasons, it is the opinion of the Ethics Commission that you must obtain both secondary employment approval and request a waiver of the Ethics Law before publishing and marketing the book as you have proposed.

The publication of the book, “[Title withheld]”, includes compensation and, as such, secondary employment approval is required by the Ethics Law. §19A-12(a)(1) of the Montgomery County Code. A waiver of the provisions of this section may be granted based upon establishment of at least one of the factors that appear in §19A-8(b) of the Montgomery County Code. The content of the book, and the various circumstances surrounding its publication, however, present several additional issues requiring that a waiver of the Ethics Law be requested.

First, the inclusion of the material prepared in response to the County Council’s request for information would result in a use of County facilities, property and work time for personal gain. This is prohibited by the Ethics Law absent the grant of a waiver. §19A-14(c) of the Montgomery County Code. Similarly, the provision of lists of individuals who have attended your classes, including County employees also derives from property of the County. In addition, State law designates the names and addresses of public employees to be confidential. See Md. State Govt. Code Ann. §10-616–§10-617. As such, the disclosure of the names and addresses of public employees, including attendees at training seminars, to the publisher is prohibited by the Montgomery County Ethics Law, which prohibits disclosure of confidential information for personal gain or the gain of another. §19A-15(a) of the Montgomery County Code. To obtain a waiver of this provision of the Ethics Law, you must establish each of the elements that appear in §19A-8(a) of the Montgomery County Code.

Second, the use of your position title in the book involves the use of the prestige of office for private gain and the use of an official title in connection with a private enterprise. §§19A-14(a) and 19A-14(b) of the Montgomery County Code. An official title may be used in connection with a private enterprise only if expressly authorized by the Chief Administrative Officer (CAO). §19A-14(b) of the Montgomery County Code.

The Commission, therefore, advises you to submit a secondary employment request and a request for a waiver in accordance with the provisions of the Ethics Law discussed herein. In addition to the general information required by §19A-8 of the Ethics Law, the Commission recommends that you include the following information with your request:

- A copy of your request for CAO approval to print the book and receive compensation.
- A copy of your request to the CAO for approval of the use of your County position title in the book and to include a notation that the book is published with the permission of the Montgomery County Government.
- A copy of the CAO's response to your request.
- A list of the publications in which the articles appeared prior to this compilation, along with the dates of publication.

Moreover, the Commission advises you to include a copy of this advisory opinion along with your request for approval from the CAO to engage in this secondary employment and to use your official title, to assist the CAO in addressing the Commission's concerns.

If you have any questions regarding this advisory opinion, please do not hesitate to contact the Commission.

2600.JLC.KLFH

cc: Barbara McNally, Administrative Specialist  
Ethics Commission